

Matt Carnagie

From: Diana Raimi <draimi@jaffelaw.com>
Sent: Friday, June 2, 2017 6:47 PM
To: Matt Carnagie
Subject: Opposition to House Bill 4691- PLEASE FORWARD TO EACH MEMBER OF THE JUDICIARY COMMITTEE

I am writing in opposition to House Bill 4691. This bill is an attempt to completely rewrite the law of child custody in Michigan. It is poorly thought out and ambiguously drafted and in many cases it promotes policies that will harm families and children. Such a drastic overhaul of an area of law that affects more Michigan families than almost any other requires thoughtful policy choices and careful drafting and should not be rushed through without substantial opportunity for comment by people—such as family lawyers, Judges, and psychologists—who have spent their careers observing the ways in which the current system affects families and developing perspectives on how the system can be improved.

One particularly troubling aspect of this Bill is its presumption in favor of 50-50 custody (equal time sharing) with a heavy burden of proof to rebut the presumption. Families are not all alike and there should be no one-size-fits-all formula. Under existing law, family Judges have discretion to make temporary as well as long-term custody awards, and in my experience they take this responsibility seriously and exercise it thoughtfully, in good faith, and with reference to the particular facts before them in any given case. This Bill hamstringing them in the exercise of this discretion. Families gain no advantage from this Bill's new mandate. The Bill will not reduce conflict or litigation. All it does is shift the subject matter of litigation and the nature of the proofs, tossing out years of established legal precedent in the process. Worse, it does so after forcing on families a status quo that may often be totally contrary to the best interests of the children and completely at odds with the past roles of the parents. Why deny Judges the power to look at the actual circumstances of the families who come before them?

I note, also, that this Bill conflicts with current child support law in its treatment of support and housing expense. Given how sweeping this Bill is, there are doubtless other areas where it conflicts with related law, but the proposed "fast-track" scheduling of the Bill precludes a careful consideration of these matters.

With the Judiciary Committee meeting coming up in just a few days, there is insufficient time to detail the many serious problems with this Bill. If the Judiciary Committee truly wants to review and improve Michigan's custody law, I strongly urge you to work with the family Bench and Bar to develop a more thought-out, comprehensive, and practical Bill. Please vote "No" on this Bill in its current form.

To assist you in evaluating my comments, here are some of my qualifications: I have practiced family law for over 35 years. I am a Fellow of the American Academy of Matrimonial Lawyers and the Michigan State Bar Foundation. I have been listed continuously for years in Best Lawyers in America and Michigan Super Lawyers, and have authored or edited numerous publications and taught or moderated dozens of seminars for the Institute of Continuing Legal Education.

Thank you for considering my comments.



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**HB 4691 – Presumption for Joint Legal Custody and Equal Parenting Time
Comments of the Michigan Poverty Law Program
June 6, 2017**

Chairman Runestad, members of the House Judiciary Committee, thank you for the opportunity to provide these comments expressing concerns regarding HB 4691. The Michigan Poverty Law Program – Family Law Task Force engages legal services advocates with interest and expertise in issues related to domestic violence, custody and other family law matters, particularly as they apply to low-income individuals.

HB 4691 changes current law by presuming equal custody is right for all Michigan families

- A presumption of equal custody relies on assumptions that are not true for all families. Not all families are similarly situated and have children with various needs. Equal custody works well where both parents share a commitment to what is best for their children and an ability to work together. In families where there is a history of domestic violence or high conflict, equal custody can be harmful to children.
- A presumption is triggered when parents are unable to agree on custody, including when one parent believes equal custody is unsafe, inappropriate or not in child's best interests. These are the cases that raise concerns about child safety and require more assistance; not a one size fits all solution.

HB 4691 relies on vague definitions that will create uncertainty, lead to more legislation and increase financial burdens on families

- Section (2)(l) defines "materially compromised" to mean "diminished outcomes that exceed minor deviations" without identifying any outcomes or how deviations will be measured. Diminished outcomes must "have a significant and profound" impact on the child, however, the definition fails to indicate what a profound impact included.
- The definition of "substantially equal parenting time" in section (2)(o) creates a vague and inflexible standard by requiring the court to "provide balance and equality in overnights" yet bars parenting time that exceeds 200 overnights.
- The bill re-defines the "best interest of the child" but fails to clearly indicate when the new factors apply and creates additional conflicting standards to measure what's best for children that apply to rebut the presumptions for an established custodial environment, joint legal custody and joint parenting time.

Presumptions of joint legal custody and equal parenting time places victims of domestic violence at risk

- Abusive parents who believe they have the right to control their partners through violence, intimidation and coercive controlling abuse are poor candidates for shared decision making and equal parenting time. Shared custody requires the parents to continue to have contact to make joint decisions or to exchange children. Such exchanges give abusers access to victim parents and children that allow ongoing abuse, an opportunity to exert continuing control over the victim's life and exposes children to a continuation of the abuse.
- HB 4691 eliminates domestic violence from a consideration of the best interests of the child.
- The only instance when domestic violence may be specifically raised is to rebut the presumption of substantially equal parenting time. However, the parent must prove domestic violence by clear and convincing evidence and a parent who lacks corroborating evidence of domestic violence will likely be punished for making a false allegation and lose custody.

A presumption of equal custody impoverishes families

- The bill permits the court to ignore the law regarding parents' responsibility to provide financial support for their children by permitting the court to reduce support payments if the parent who would pay support because of that parent's higher income is unable to provide housing for the child and the other parent has "sufficient resources."
- An award of equal custody does not guarantee both parents will be equally involved in caring for the child. Some parents seek equal custody as a subterfuge to a lower child support obligation, without spending equal time with children.
- Research has shown that equal custody results in increased litigation, particularly for a parent who believes it would be harmful to the child and increased cost to families, particularly poor families.

Rather than a presumption, family differences should be considered in the law

- Current law requires the court to "consider, evaluate and determine" the best interests of each individual child before reaching a custody determination. The best-interest approach keeps the court and parents focused on what is best for a particular child.

The presumptions in HB 4691 supplant this individualized, child-focused analysis and shifts the focus from the child to the needs of parents. For this reason, we respectfully request that you oppose HB 4691. Thank you for your consideration of these comments. If you have any questions or concerns, please do not hesitate to contact me, or MPLP's governmental affairs consultant, Jean Doss (see below).

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June 5, 2017

Re: HB 4691

Members of the House Judiciary Committee,

The National Association of Social Workers - Michigan Chapter has serious concerns about the effect that HB 4691, the proposed Michigan Shared Parenting Act, would have on Michigan families. While joint custody can be a favorable option for families who desire this arrangement, imposing a one-size-fits-all solution is very dangerous.

A willingness and commitment on behalf of both parents to cooperate, communicate, and respectfully co-parent is necessary for joint custody to be successful and beneficial for children. Such factors are not present in every family situation. Even in situations where the parents are both interested in joint custody, the needs of the child or children and logistics of each family's living situation must be considered.

Further, when active substance abuse, untreated mental health issues and/or domestic violence exists, joint custody should be prohibited unless and until the court has evidence that the parent with such issues has made meaningful change to ensure the safety of the child(ren). A parent who believes that joint custody will cause harm should not face the undue burden of a presumption as they go to court to state their concerns. Nor should they have to prove the other parent "unfit" in order to advocate for what they believe is in the best interest of their child(ren). Two states, Oregon and California, have repealed their mandatory joint custody laws because of the resultant unintended consequences, including increased animosity and litigation.

NASW-MI fully supports both parents being active in their child's or children's lives when both parents are capable of fulfilling their responsibilities. However, it is important to note that joint custody is not the only way to ensure that both parents are able to maintain significant meaningful roles in cases of divorce or other family structure changes.

To serve the best interests of Michigan's children and families, we advocate that in moving forward with any custody law reform, the provisions in current law allowing a non-presumptive starting point, coupled with customizable approaches to address the unique circumstances and needs of each family be preserved. Additionally, we advocate for public policy that would lead to increased training opportunities for judges and Friend of the Court staff to better understand the effects of domestic violence, substance abuse, and mental illness on families.

Sincerely,

Erica Schmitt diel

Legislative and Social Policy Committee
NASW-Michigan

Michigan Coalition to End Domestic & Sexual Violence

Domestic Violence and Joint Custody

- Joint custody already receives special and preferential consideration under Michigan law, which requires courts to inform the parties of the availability of joint custody, consider awarding joint custody if either party requests it, and state the reasons on the record if joint custody is not awarded.
- Most custody cases are resolved by the parties coming to an agreement. Since Michigan law directs judges to enter such agreements as the final custody order, unless the court finds by clear and convincing evidence that the agreement is not in the “best interest of the child”, this presumption would most directly impact those cases where the parties cannot agree. A large majority of these cases involve domestic violence.
- Research and experience indicates that for joint custody arrangements to be successful for children, parties must be highly motivated and committed to co-parenting in different households. Cooperation, compromise, communication and safety are all necessary components to a successful joint custody arrangement. These components are not present in every situation, and certainly do not exist where one party has a history of abuse against the other. Joint custody should be an option if both parents support it and if they are capable of cooperation; it should have no presumptive superiority, and it should be disallowed if the parents’ relationship is chronically conflictual or if one parent has abused the other.
- Joint custody places a great burden on some children. Joint custody often requires a child to move back and forth continuously. Even in the best of situations, with highly committed and cooperative parents, the child must live in two households and neighborhoods, in essence having two lives. Some children simply do not have the capacity to thrive under these circumstances.
- Joint custody does not improve parental cooperation in high conflict cases. It has been well documented that joint custody actually increases conflict in these situations, resulting in greater trauma and harm to the child.
- Unfortunately, pursuing joint custody is not always done out of a desire to spend time with the child. In domestic violence situations, abusers frequently use joint custody to prevent the victim from leaving, as many victims will stay rather than risk the child living alone with the abuser. In cases where the victim does leave, gaining joint custody allows the batterer continued legal access to control and abuse both the adult and child victims. A presumption of joint custody will only make these tactics easier and more effective.



Linda Wright
Judiciary Committee
June 6, 2017

Good Afternoon. Thank you for granting me this opportunity to speak today. I am not here to speak on behalf of lawyers or judges or friend of the court, DHS, CPS or any of the other entities involved in the business of child custody. I am here to speak on behalf of Michigan's children and in support of this bill to enact a rebuttable presumption of shared parenting in child custody cases. All Children, those living in intact parental homes as well as those living in divorced or separated parental homes need and deserve to retain the guidance and love from both of their parents, and also from their complete extended families.

My name is Linda Wright and I am a Mother, and a Grandmother. I am currently a Licensed Dental Hygienist. Previously, I was a licensed Family Child care provider for 8 years. I have raised two children by myself since my husband died in 1998. Although my children's experience of growing up without a father is different than that experienced by children from divorced or separated parents, they still have experienced the devastating loss of their fathers' love, guidance and companionship so important to and desired by them.

Although I did my best to provide my son and daughter with good strong male role models, their loss from not having their father in their lives remains evident today into their adulthood. No one can replace your own Mother or Father. The natural design of children having two parents is not flawed.

While we can't protect our children from the loss of a parent resulting from death, we certainly have the ability and the responsibility to do everything possible to prevent the loss of a parent that occurs through divorce. This loss is being ordered in our court rooms when one parent is named and sentenced as a non- custodial parent. The children are the innocent victims here. We have the duty and the obligation to protect those who cannot protect themselves.

Until the birth of my first and only Grandchild, I too was ignorant of the devastating and overwhelming emotional and financial realities that occur when met when one parent attempts to eliminate the other parent as well as the entire family...simply because they broke up. A parent with sole physical custody has great power.

My son, who is a wonderful, fit, able and willing father and their daughter who is now 3 years old have an every other weekend schedule, 2- 5 hour Wednesdays, 2 Wednesday overnights, every other holiday and 2 weeks in the summer. We paid immensely, both financially and emotionally in order that his daughter would be able to have this time with her father. In the past 3 years, in order for my son to have any contact with his daughter, I have had to spend the entirety of my savings, hard-earned savings from my over 40 years of working. This corruption in the system should not be happening.

Good Afternoon. Thank you for granting me this opportunity to speak today. I am so grateful that Michigan's legislature and citizens hold so dearly the well being of the children of our great state. Michigan's willingness and desire to encourage and enact change to benefit and enhance children's lives and provide the best opportunities for our children is commendable. I am proud to be a lifelong citizen of a state that places our children foremost in importance. I am not here to speak on behalf of lawyers or judges or friend of the court, or any of the other entities involved in the business of child custody. I am here to speak on behalf of Michigan's children and in support of this shared parenting bill. All Children, those living in intact parental homes as well as those living in divorced or separated parental homes need and deserve to retain the guidance and love from both of their parents, and also from their complete extended families. Our children need your help to obtain this.

My name is Linda Wright and I am a Mother, and a Grandmother. I am currently a Licensed Dental Hygienist. I was previously a licensed Family Child care provider for 8 years. I currently am working with the National Parent's Organization to establish a Michigan chapter to continue to advocate for our children. I have raised two children by myself since my husband died in 1998. Although my children's experience of growing up without a father is different than that experienced by children from divorced or separated parents, they still have experienced the devastating loss of their fathers' love, guidance and companionship so important to and desired by them. Although I did my best to provide my son and daughter with good strong male role-models, their loss from not having their father in their lives remains evident today into their adulthood. No one can replace your own Mother or Father. The natural design of children having two parents is not flawed and needs to be protected.

While We can't protect our children from the loss of a parent resulting from death, we certainly have the ability and the responsibility to do everything possible to prevent the loss of a parent that frequently occurs through separation. Loss that is being ordered and supported in our court rooms when one parent is named as a non- custodial parent. The children are the innocent victims here. I know that We all hold dearly our duty and our obligation to protect those who cannot protect themselves.

Some say it takes a village to raise a child. Others remain with the belief that the responsibility inherently and rightfully belongs with the parents and is hopefully enhanced with the support of their extended families. However, as is being currently demonstrated in many custody decisions all it takes to eliminate this is for one parent to disagree. This one parent's disagreement then frequently enables the child to essentially lose both, their other parent, as well as their village.

Until the birth of my first and only Grandchild, I too was ignorant of the devastating and overwhelming emotional and financial realities that occur when met with one parent's insistence that they intend to do everything in their power to eliminate the other parent as well as the entire paternal family...Simply because Mother and Father separated. In my experience, in every aspect of this parents mission they have had great power and has easily exerted this power because of the desire to have and has been given sole physical custody. In retaliation for my son filing for Joint custody This parent has systematically made her way through a popular checklist of false allegations and ploys commonly used to ensure sole custody. Unfortunately it frequently and very easily works. The current courtroom orders especially the lack of consequences from this behavior are encouraging and enabling this to continue. The current custody act, written in 1970, is outdated and falls far from being relevant to the changes in the dynamics of today's society. Our current system encourages constant litigation which is very profitable for the family law attorneys and very harmful to our children and families.

This is 3 years of a father fighting to be a father to his daughter.

This is my retirement

This book cost me, my son and his daughter \$30,000.

With the current system when one parent refuses to share the parenting of their children with the other parent for any number of reasons or perceptions the other parent is then forced to ask the courts to intervene. The power and duty to enable and encourage more than a limited amount of access and influence of the child's entire family lies solely in the Judge's hands. With a rebuttable

presumption of equal parenting being the starting point, thus initially presuming at the start that children deserve equal access to both parents, and that both parents are equally deserving of parenting their child, the preservation of the child's parental relationships is allowed to occur. Judicial discretion may then be applied, if clear and convincing evidence shows that this is not in the best interest of the child.

I would like to address a statement previously made before this committee regarding how Judges only decide custody in 1% of cases and that the other 99% come to their own agreement. Settling is not synonymous with agreeing and doesn't mean it is the right choice. In many cases it is the least risky choice available. Kind of like a plea bargain. One prevalent reason many parents end up settling their case is because they simply have no more money to continue paying the attorney and court costs. Many never have the money to begin and must just accept what is presented. I have exhausted my retirement fund that I have worked 41 years to save. I am confident there will be more needed. We simply do not have any more. A much greater cost paid was with time, time that can never be regained.

Secondly, when one is told by their attorney that the Judge said, "I am not going to give him 50/50" and "I am not going to award make up time for all the denied parenting time, there is just too much, we will just move on from here". And also told, "I am not interested in hearing all about the 27 allegations made which you state you have evidence to prove false" When you are told this by your lawyer as you are awaiting the beginning of the hearing, and it has been 3 years and already cost many tens of thousands of dollars..... and... you are urged to just settle, most often, faced with uncertainty and fear you settle. That doesn't mean you agreed, it means you had to settle. Most recently in our case, what my son settled upon was not even what was then put on the record by his attorney. His attorney spoke incorrectly and Consequently, now he has stipulated to something he did not agree too, with no recourse.

Recent Census Bureau child custody statistics indicate that nearly 40 percent of all noncustodial fathers have no access to or visitation rights with their children. Children, if given the choice, would not choose to have only one of their parents. They love and need them both.

the child support money. Our children are not for sale. No parent should lose the ability to parent their child in a substantial way because they make more money and can therefore better subsidize the other parent's finances. Shared parenting of children should not be opposed on the basis that the now sole custodial parent may receive less child support. Child support is to provide for the child. It is not alimony to support the other parent. Our children are not for sale, they are not pawns to be used in a game with one parent becoming the "winner" while the other a "loser" The children lose too. This bill seeking a rebuttable presumption of substantially equal shared parenting, does not contain efforts to eliminate child support.

According to the Census Bureau, parents who owe child support are more likely to pay the ordered child support if they either share custody of or have significant parenting rights with their children. I have spoken with many fathers who state that they would gladly continue to pay child support if they could just have more time with their children. The desire to eliminate paying child support is not the motive for most in their endeavor for equal parenting. I certainly hope that the desire to continue receiving income from one parent is not the basis for denying the children equal access to both parents.

Frequently we hear "Fathers need to step up to the plate and be fathers to their children" Many, many fathers would love to do just that. In reality, fathers are met with incredible obstacles from many different avenues including the other parent as well as the courts thwarting their efforts to do just that. To Be a father...not a visitor...and not just a paycheck. The scale of justice is heavily tipped. On one side we criticize and hold fathers accountable for not being fathers to their children calling them deadbeats, while on the other we inhibit and remove their ability to do so by ordering severely limited authority and access to their children.

Our Childrens' right to both parents is consistently being stripped away from them based on the bias and presumption that Mother and father are not equal in their ability and in their inherent natural right to parent their children. How about we start with the presumption both parents are good parents , until it is proven otherwise. That is entirely logical. Sole custody of children should be the last resort not the standard. In addition to happier, healthier children. There are

many benefits to those who are now sole custodial mothers, or single mothers. Shared parenting is equally advantageous to women and mothers equality providing them time to pursue higher education and pursue advances in their careers and closing the pay gap. The sharing of the duties and responsibilities of the children also gives women time to explore personal interests and hobbies. It would allow women to have more rest and relaxation and relief from the stress of full time child rearing thus rejuvenating their energy and emotional reserve.

Michigan's children are suffering. There is a crisis occurring. We have increased truancy, child and adolescence crime, substance addiction issues, heroin addiction, people overdosing and dying in McDonalds bathrooms, in cars as they drive down the road. We have increased suicides and suicidal thoughts in children. We have a mental health crisis with children. Currently, Network 180 in Kent County is implementing a mobile crisis team to diffuse the situation of overcrowding in hospitals and mental health facilities for children. One single mother in an article published last week on Wood tv News 8 in Grand rapids stated that her suicidal 12- year old remained in Helen DeVos Children's hospital for more than a week because he can't get a bed at a mental health facility. She stated "They just said there's no beds anywhere in the state. It could be up to two, three weeks before any type of placement is available for these kids". We are now seeing the second and third generation of children who are growing up without the benefit of a substantial relationship and guidance and discipline from both parents. The emotional toll of the change in family dynamics is certainly related to the increase in emotional difficulties. Taking one parent out of their proper role and instituting them as a mere visitor isn't working for our children. It is quite evident that it is harming them. Michigan's lawmakers must make changes that allow and enable fathers as well as mothers to remain instrumental in raising their children to be healthy, self-sufficient, and mentally and emotionally secure adults.

I am excited and optimistic in the progress seen so far in the continuation of this initiative. There is great hope for Michigan's children. The benefits of Shared parenting is in the forefront of many nations across the world. Countries across the globe are recognizing the significance of improving the lives of children. Children and families are the fabric of our society, the future of our world.

HB 4691 is about the shared parenting of children. It is not a bill about what is in the best interest of lawyers or what is in the best interest of Judges, or really what is in the best interest of the parents. It is not about money. It is, about what is in the best interest of the children.

In conclusion, I would like to share some words from Robert Franklin of the National Parents Organization regarding Last weeks International Conference on Shared Parenting that was held in Boston. People came from over 24 Countries, some from as far away as Australia, Sweden and Japan. The scientists at the conference included such luminaries as Sanford Brauer, Richard Warshak, Linda Nielsen, Irwin Sandler, Michael Lamb and William Fabricus. The consensus agreed upon was that the science on Shared parenting is now sufficiently well established for us to say that shared parenting should be the default position in family courts. Solid Science unequivocally supports that there is no longer any doubt about the benefits of shared parenting to children, parents and judicial process that is significant enough to delay making shared parenting public policy everywhere. There is no doubt about its superiority to sole parenting.

Your attention and high regard towards the importance of the current research studies and evidence based facts which overwhelmingly support that shared parenting is what is best for children lends great respect and confidence in our states lawmakers. I ask that you vote yes on this bill and make each child able to retain equal access to both of their parents and families. Thank you again for your consideration and attention to this very important aspect of our children and grand childrens' lives. Michigan looks forward to the betterment for children. Shared parenting is Michigan's future. Let's get there sooner than later.

Thank you so much for your time.